

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

M3 GIRL DESIGNS, LLC

Plaintiff,

v.

BLUE BROWNIES, LLC

KRISTA DUDTE, ROBERT DUDTE,

and SHANNON DUNN

Defendants.

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CIVIL ACTION NO. 3-09CV2390-F

**MEMORANDUM IN SUPPORT OF DEFENDANTS' SECOND MOTION TO
COMPEL AND SECOND MOTION FOR SANCTIONS UNDER RULE 37**

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I. OVERVIEW

Defendants Blue Brownies, LLC (“Blue Brownies”) and Krista Dudte and Robert Dudte (collectively “Defendants”) file this motion to compel Plaintiff M3 Girl Designs, LLC (“M3 Girl”) to produce its email correspondence and QuickBooks database in native electronic form pursuant to FRCP 37 and FRCP 34, and to answer Interrogatories completely, and for sanctions pursuant to FRCP 37.

II. PROCEDURAL HISTORY

Plaintiff filed this suit on December 15, 2009 alleging copyright infringement, trademark infringement and various Texas state law unfair competition claims. On October 4, 2010, this court granted a motion to dismiss Plaintiffs state law claims due to federal preemption, ruling that the core of Plaintiff’s state law claims were pre-empted by federal patent and copyright law. *See Order Granting Def.s’ Mot. Dismiss Pl.’s State Law Claims Due to Federal Preemption* (Dkt. # 42). Defendants submitted discovery requests based on the primary copyright claims and conferred with Plaintiff’s attorney before filing a motion to compel. On February 28, 2011, in response to a demand for documents to support the copyright claims, Plaintiff filed an Amended Complaint (Dkt. # 52) dropping the copyright claims entirely and adding new trademark claims, both federal (15 U.S.C. § 1125) and state, in particular trade dress infringement claims, to try and get around the preemption of the federal patent and copyright preemption. Plaintiff filed a Second Amended Complaint (Dkt. # 72) on May 13, 2011 also alleging the trade dress claim.

On January 13, 2011, Defendants submitted their First Set of Interrogatories, with eight interrogatories (App. at 2, Ex. A) which are quoted below.¹ There is no legitimate basis to object to these interrogatories. Requiring Plaintiff to reveal the basis of its claims is not overly burdensome.

1. Identify each copyrighted bottle cap design of Plaintiff's which Plaintiff has asserted to be an infringement and identify each corresponding bottle cap design that Plaintiffs contend is the basis of and infringement claim.
2. Identify each pre-existing work or design and its source that was used as all or part of Plaintiff's bottle cap design placed in any of Plaintiff's bottle cap designs.
3. Identify the date of first publication of each of Plaintiff's copyrighted works.
4. Identify all persons who you believe have knowledge of relevant facts and describe the issues upon which you believe they have knowledge.
5. OMMITTED.
6. If you contend that you have been injured or damaged, describe the injuries and damages.
7. If you are seeking an award of any sum of money, whether by damages or otherwise, state the full amount of money you seek and describe the manner in which the amount was calculated. Your description should include each element of damage or component of recovery that you seek, the amount sought for each element or component, the manner in which each element or component of the calculation was determined, and should identify the source of each number used in the calculation.
8. With respect to any document or thing called for in Defendants' requests to produce which is withheld because it is asserted to contain information relating to matters claimed by Plaintiff to be privileged or exempt from discovery, state the nature of the privilege (including work product) or other exemption from discovery which is being claimed and the facts which support such claim of privilege or exemption and provide the following additional information:
 - i. the date, identity, and general subject matter of each document;

¹ The Court will recognize many of the interrogatories from the Standard Interrogatories from the Western District of Texas local rules.

- ii. the identity of each person (other than stenographic or clerical assistants) participating in the preparation of the document;
- iii. the identity of each person to whom the contents of the document were communicated by copy, distribution, reading or substantial summarization;
- iv. a description of any document or other material transmitted with or attached to the document; and
- v. whether any business or non-legal matter is contained or discussed in the document.

[9.] Specifically identify the fee arrangement which Plaintiff has with its attorneys.

On January 13, 2011, Defendants submitted their First Set of Document Requests (App. at 9, Ex. B) which included requests for financial records (*e.g.*, *Id.* ¶ 10, 11, 88-89, 128) and records that would include electronic documents such as emails, website authoring documents, and digital financial records (*e.g.*, *Id.* ¶¶ 1-11, 12-15, 17-27, 45-52, 79-88, 92-105, 110-122). Defendant's Request specifically asked for, "A full copy of the electronic data file for Plaintiff's computer financial records in its native format;" and "[a] full copy of the electronic data file containing Plaintiff's email correspondence in its native format referring or relating to any matter asserted or raised in this lawsuit." (*Id.* ¶128-29).

On February 10, 2011, Defendants granted Plaintiff's request for a two week extension to respond to the discovery requests. *See* App. at 35, Exhibit C, Letter from Mr. Hemingway to Mr. Hanor, Feb. 10, 2011. On February 26, 2011, Plaintiff refused to timely respond.

On March 1, 2011, Defendants received Plaintiff's belated and deficient interrogatory responses (App. at 51, Ex. E), and Plaintiff's belated and deficient document request responses (App. at 69, Ex. F). The interrogatory responses included broad and general objections, for example, calling the fee agreement between the Plaintiff and its counsel "irrelevant and privileged," (App. at 65, Ex. E at 15) despite acknowledging earlier in the response to

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interrogatories that Plaintiff is seeking attorneys' fees (App. at 60, Ex. E at 10). Plaintiff stated outright that it would not respond to Interrogatory No. 1, 2, and 3. Plaintiff did not provide any of the information requested in Interrogatory No. 4, which asked a sworn response to the identity of all persons with knowledge of relevant facts. In regards to Interrogatory No. 9, Plaintiff stated outright that it would not disclose the fee arrangement between Plaintiff and its attorneys "unless ordered to do so by this Court" (Plaintiff has asked for an award of attorney's fees).

Defendants filed a Second Request Set of Document Requests to Plaintiff on March 14, 2011, asking for additional documents, including more specific requests for emails. *See* App. at 147, Ex. D, ¶ 166-67.

After conferring on the issues set forth herein, on March 22, 2011, Defendants received Plaintiff's Supplemental Initial Disclosures (App. at 220, Exhibit H). Plaintiff entitled these supplemental materials as also being "Supplemental Responses to Interrogatory No. 4 and Nos. 6 and 7," but this designation was improper. Plaintiff did not verify its supplemental disclosures, or specify which portion of the supplemental disclosures applied to Interrogatory Nos. 4, 6 or 7. Plaintiff corrected some of this by filing a Verification of Interrogatory Responses and Second Supplemental Initial Disclosure. However, Plaintiff still did not fully respond to Interrogatories 1-3 or 5-9 and has yet to do so.

Defendant filed a Motion to Compel and Motion for Sanctions on March 23, 2011 (Dkt. # 56) because of Plaintiffs failure to produce documents or properly respond to the Request for Disclosure and Interrogatories. On March 29, 2011, Plaintiff sent a letter to Defendants' counsel offering for inspection 23 boxes including approximately 90,000 pages of documents "including disks of information and DVDs" (App. at 231, Exhibit I). The disks and DVDs had a few digital photos but did not include emails or the QuickBooks database files in native digital format.

Plaintiff responded to the above Motion to Compel on April 11, 2011 (Dkt. # 62), by arguing that to date Defendants had been offered access to about 90,000 pages of documents and that it could be copied for about \$14,000.00. In its Response to Defendant's Motion to Compel, Plaintiff asserted to this Court that "the Plaintiff's business records are, for the most part, paper records." Plaintiff now admits it has input its paper records into QuickBooks and has emails. A review of Plaintiff's records reveals little conventional paper correspondence.

On April 14, 2011, the deadline for producing the items requested in Defendant's Second Set of Document Requests to Plaintiff expired with Plaintiff having not produced any additional documents or things or filing an objection.

On April 19, 2011, this Court denied the motion to compel, without prejudice, relying in part on Plaintiffs assertions that it had made the requested documents available, because Plaintiff had stated in their response that much of the Discovery was being provided and because "Defendants' inspection of the discovery provided may significantly narrow the scope of the issues that the Court needs to decide." (Dkt. # 65 at 2).

Plaintiff did not file a Response or name objections to Defendant's Second Set of Document Requests to Plaintiff. However, Plaintiff has ignored the majority of the requests in the Second Set of Document Requests, including specifically requested correspondence and emails listed in requests 166-171 (App. at 47).

Defendant's attorney flew to Plaintiff's attorney's office in Dallas on June 13, 2011 to examine the Plaintiff's proffered documents, which included many boxes of documents from storage. Most of the electronic files which Defendant requested on January 13, 2011, were not made available to Defendant's attorney. At that time Plaintiff's attorney said that emails would

be provided at some unknown time in the future and that the QuickBooks database would not be produced. As was expected, most of the production was old paper records including receipts and many hundreds of individual invoices. Defendant made a video of the inspection of the documents which indicated that most of the produced documents were not relevant. Plaintiff simply dumped every old box of paper records from its storage onto Defendant and withheld some of the key production like the native versions of the QuickBooks database and emails which would fit on a \$0.10 CD. By culling out the irrelevant documents Defendant's Attorney reduced the copying cost to only \$1,350.00.

Most recently, Plaintiff's attorney has sent Defendant's attorney a letter stating that the emails would be made available in "a few weeks." (App., Exhibit J).

DVD's of scanned documents from the Plaintiff's boxes were delivered. Defendant only copied a small percentage of pages of the produced 90,000 pages. Plaintiff's attorney has still outright refused to provide any financial records or emails in native digital form. It has been over six months since Defendant's First Document Requests and Plaintiff, who initiated this lawsuit, has refused repeated requests to provide electronically stored information in its usable and searchable, native electronic form.

Plaintiff has further never provided a proper response to the majority of the interrogatories and has never provided a privilege log as requested in Interrogatory No. 8 and required by FRCP 26(b)(5)(A).

III. ARGUMENT

A. Legal Standard

1) Motion to Compel

If producing party does not produce electronically searchable information, the requesting party can file a motion to compel the discovery of the electronically searchable information under FRCP 26(b)(2) (B) and 37(a)(1). “Busy courts should not be required to trifle forever with counsel who does not pay attention to his duty to his clients and to the court.” *Vela v. Western Electric Co.*, 709 F.2d 375, 377 (5th Cir. 1983)

2) Discovery of Electronically Stored Information (ESI)

“[P]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense” or “appears reasonably calculated to lead to the discovery of admissible evidence.” FRCP 26(b)(1). A party objecting to discovery must “articulate specifically” the basis for its valid objections. *Export Worldwide, Ltd. V. Knight Aerospace Prods., Inc.*, 241 F.R.D. 259 (W.D. Tex. 2006)

The Defendant was entitled to serve a request for production of documents “including electronically stored information—including writings, drawings, graphics, charts, photographs, sound recordings, images and other data or data compilations—stored in any medium from which information can be obtained.” FRCP 43(a)(1)(A). The requesting party is entitled to emails, financial records and other electronic records in their native form. “A party must produce documents as they are kept in the usual course of business.” FRCP 34(b)(E)(i). Furthermore, “If a request does not specify a form for producing electronically stored information, a party must

produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” FRCP 34(b)(E)(ii).

3) Discovery Objections Must Be Specific and Timely

Objections to discovery must be timely and “must be stated with specificity,” or they are “waived unless the court, for good cause, excuses the failure.” FRCP 33(b)(4); *see also Enron Corp. Sav. Plan v. Hewitt Assocs. L.L.C.*, 258 F.R.D. 149, 153, n.1 (S.D. Tex. 2009) (Rule 33 requirements of timeliness and specificity apply to both interrogatory and document request objections, equally).

“Boilerplate objections are not acceptable; specific objections are required in responding to a Rule 34 request.” *Enron Corp.*, 258 F.R.D. at 159 (internal quotations and citations omitted). Generic objections not specific to each request are insufficient. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990). As the court explained in *S.E.C. v. Brady*, 238 F.R.D. 429, 437 (N.D. Tex. 2006):

In order to satisfy its burden, the objecting party must make a specific detailed showing of how a request is burdensome. . . . A mere statement by a party that a request is ‘overly broad and unduly burdensome’ is not adequate to voice a successful objection. . . . Broad-based, non-specific objections are almost impossible to assess on their merits, and fall woefully short of the burden that must be borne by a party making an objection to an interrogatory or document request.

It is a “general rule” that untimely objections are waived, absent good cause for the delay. *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989); *Ordoyne v. McDermott, Inc.*, U.S. Dist. LEXIS 12075 (E.D. La. 2000) (finding objections waived because they were twenty-two days late). In determining whether good cause exists for an untimely objection, courts consider the circumstances of the delay to determine “whether it was inadvertent, defiant, or part of a larger

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calculated strategy of noncompliance. . .” *RE/MAX Int’l Inc. v. Trendsetter Realty, LLC*, 2008 U.S. Dist. LEXIS 38101 (S.D. Tex. 2008); *see Hall v. Sullivan*, 231 F.R.D. 468, 473-74 (D. Md. 2005) (identifying particular factors to consider). In lieu of waiver, courts may consider “any lesser appropriate sanction.” *RE/MAX*, 2008 U.S. Dist. LEXIS 38101, at *5.

B. The Requests for emails and financial records are discoverable as they relate to essential elements of Plaintiff’s claims.

The requested emails are “reasonably calculated to lead to the discovery of admissible evidence” as is required by FRCP 26(b)(1). For example, Plaintiff unsuccessfully asserted copyright claims which caused Defendant to incur large attorney fees which are recoverable under copyright law. *See* 17 U.S.C. § 505. Because of this, the information related to copyright is relevant to prove the lack of merit of Plaintiff’s original claim and to show Defendant as the prevailing party. Defendant has asserted counterclaims of false advertising which are likely verifiable from the emails. It would appear that most of Plaintiff’s communications with vendors, like its advertising agency, were by email. Plaintiff has asserted Trade Dress Infringement and various other trademark-related claims for which the requested emails and financial data are reasonably calculated to lead to the discovery of admissible evidence.²

C. Plaintiff’s Response to Defendants’ Requests for Production Are Utterly Deficient

1) Plaintiff’s Untimely and Generic Objections Are Waived

Plaintiff asserted identical, generic objections to each and every request for production:

² Plaintiff’s claims include State Trade Dress Infringement; State Dilution by Blurring; State Dilution by Tarnishment; State “Palming Off” Claims; State Unfair Competition; Trademark Infringement; False Designation/Description and False Designation/Description (Trade Dress) *See, generally*, P. Second Amended Complaint (Dkt. #72).

M3 Girl Designs incorporates by reference the foregoing reservation of rights and general objections as if fully set forth herein. M3 Girl Designs objects to this Document Request to the extent it calls for the disclosure of information or documents that are Privileged Materials. No Privileged Materials will be produced. Furthermore, M3 Girl Designs objects to this Document Request because to the extent it seeks information or documents that are not relevant to any party's claim or defense, or seeks information or documents that are not reasonably calculated to lead to the discovery of admissible evidence.

M3 Girl Designs also objects to the Document Request to the extent it is overly broad, unduly burden, vague and harassing. M3 Girl Designs also objects to the Document Request to the extent it attempts to impose duties upon M3 Girl Designs that are greater than those required by the Federal Rules of Civil Procedure, the Northern District of Texas' Local Rules and/or the Court's Order(s). Subject to the General and foregoing objections, the Plaintiff M3 Girl Designs responds as follows.

App. at 73-138, Ex. F

Plaintiff's objections, other than the objections on privilege, are not specific to any one of the requests for production, and therefore, the basis asserted for each of the objections is waived. Defendants are unable to address the merits of the objections or amend their requests for production, because the bases are not specifically explained.

2) Plaintiff's Refusal to Produce its Fee Agreement is Improper

To this date, Plaintiff still refuses to produce its fee agreement in response to Request No. 130. Plaintiff improperly asserts the agreement is privileged, despite a long history of case precedent that supports the request. *Weslaco Holding Co. v. Crain, Caton & James, P.C.*, 2007 U.S. Dist. LEXIS 43522 (S.D. Tex. 2007) (“[T]he attorney client privilege does not encompass such non-confidential matters as the terms and conditions of an attorney’s employment, the purpose for which an attorney has been engaged, or any of the other external trappings of the

relationship between the parties.”) (collecting cases); *see In re Grand Jury Proceedings*, 33 F.3d 1060 (9th Cir. 1994); *In re Grand Jury Subpoena*, 742 F.2d 61 (2nd Cir. 1984).

Plaintiff also incredibly asserts that the requested fee agreement, which includes information relating to Plaintiff’s retention of counsel for prosecuting this action, is somehow not relevant to this action. The objection is baseless, and the fee agreement should be produced. Defendants are entitled to know what attorney fees are being requested so it may consider this in evaluating settlement. It should not be a surprise after the case is tried.

3) Plaintiff’s Vague Responses are Incomplete and Inadequate

In response to a majority of the Requests, Plaintiff responded as follows:

To the extent understood, M3 Girl Designs will conduct an investigation to determine if the requested documents exist or can be located, and if located and can be produced without an unreasonable burden, the Plaintiff M3 Girl Designs has produced or will produce any relevant and responsive non-privileged documents.

These statements are not responsive to the requests, but instead, generally recite Plaintiff’s discovery obligations. These responses provide no substantive guidance as to whether documents exist or do not, and whether they will be produced or withheld.

Plaintiff should be compelled to amend the responses to state whether documents exist or do not, and whether documents will be produced or withheld.

4) Plaintiff’s Failure to Produce Emails is Improper

Plaintiff has repeatedly failed to produce email records that were requested in January. Though Plaintiff continues to promise the emails on some unknown future date, its continued failure to do so can only be seen as a refusal that will not be corrected without a motion to

compel. The requested emails are critical to Defendant's efforts to negate Plaintiff's claims, including, but not limited to, Plaintiff's claims of customer confusion, Plaintiff's claims that it has valid and protectable copyrights and trade dress and Plaintiff's claims that its alleged trade dress is either distinctive or has a secondary meaning. Plaintiff's emails are also relevant to Defendant's counterclaim of false advertising.

5) Plaintiff's Failure to Produce Financial Records in their Native Electronic Form is Improper

Plaintiff has failed to produce the financial records in native electronic form, as requested in January. Plaintiff has asked for damages including lost profits. To determine and verify the validity of Plaintiff's alleged profits Defendant needs access to the native files. Printouts are insufficient as financial records are among the type of ESI that cannot be converted from native form without a loss of functionality and important information. When a party produces documents in a form other than the form it is ordinarily maintained, or in a reasonably usable form, they can be forced to produce the documents again in native form. *See, e.g., PSEG Power N.Y., Inc. v. Alberici Constructors, Inc.*, No. 1:05-CV-657, 2007 U.S. Dist. LEXIS 66767, 25-26 (N.D.N.Y. Sept. 7, 2007).

Plaintiff has not explained why it has failed to provide the files in native electronic format.

6) Plaintiff's Refusal to Produce Documents Relating to Defendants' Copyright Claim is Improper

Plaintiff refuses to produce documents in response to Request Nos. 18, 19-21, 39, 56-57, and 59-62. These requests seek information relating to Plaintiff's copyright claims, i.e., claims made in its advertisements and claims formerly asserted against Defendants. This information is relevant to Defendants' counterclaims for attorney fees and it is also relevant for Defendants' counterclaims for false advertising. Furthermore, the fact that Plaintiff's trade dress may not be based on original designs is relevant to negating Plaintiff's trade dress claim.

Plaintiff's objection that there is no pending copyright claim is misleading. Plaintiff delayed filing its discovery responses until three days beyond the already extended deadline so that in the interim, on February 28, 2011, Plaintiff could file its First Amended Complaint that substitutes "trade dress" claims for its copyright claims. However, Plaintiff's dismissal of its copyright claims does not render Defendants' discovery requests irrelevant to this action, because the information requested is relevant to Defendants' counterclaims.

Plaintiff also refused to produce documents in response to Request No. 18, which seeks information related to the "derivation of any of the Plaintiff's bottle cap jewelry products." Plaintiff responded by stating that "M3 Girl does not understand what is meant by the word 'deviation,' and therefore objects to this Request for Production on that basis." *See* App. at 90, Exhibit F. Plaintiff's objection is improper, because Request No. 18 does not use the word "deviation." The word, "derivation" is easily understood, however, as it is a well-known term of art used in copyright law.³ Request No. 18 seeks information relating to Plaintiff's copyright claims to show the claims were baseless and that Defendants are entitled to appropriate damages.

³ *See, e.g.*, 17 U.S.C. § 101 ("A 'derivative work' is a work based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. **DEFENDANTS' MEMORANDUM IN SUPPORT OF DEFENDANTS' SECOND MOTION TO COMPEL**

Any designs connected to Plaintiff's product are a part of Plaintiff's Trade Dress. Defendant has reason to believe that the designs used in Plaintiff's products are not the original designs of Plaintiff, rather they are copies of commonly available clip art from Microsoft Office and others and this is relevant to Defendant's defense of trade dress. *See* App. 210-16, Exhibit G. Exhibit G provides Defendant with sufficient basis for assertion of copying and discovery on the topic is warranted.

D. Plaintiff's Interrogatory Answers Are Utterly Deficient

1) Plaintiff's Untimely and Generic Interrogatory Objections Are Waived

Plaintiff asserted identical, generic objections to each and every interrogatory:

M3 Girl Designs incorporates by reference the foregoing reservation of rights and general objections as if fully set forth herein. M3 Girl Designs objects to this Interrogatory to the extent it calls for the disclosure of information or documents that are Privileged Materials. No Privileged Materials will be produced. Furthermore, M3 Girl Designs objects to this Interrogatory to the extent it seeks information that is not relevant to any party's claim or defense, nor information sought reasonably calculated to lead to the discovery of admissible evidence.

M3 Girl Designs also objects to the Interrogatory to the extent it is overly broad, unduly burden [sic], vague and harassing. M3 Girl Designs also objects to the Interrogatory to the extent it attempts to impose duties upon M3 Girl Designs greater than those required by the Federal Rules of Civil Procedure, the Northern District of Texas' Local Rules and/or the Court's Order(s).

Plaintiff's objections are not specific to any one of the interrogatories, and therefore, the basis asserted for each of the objections is waived. Defendants are unable to address the merits of the objections or amend their interrogatories, because the bases are not specifically explained.

A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work'.")

2) Plaintiff's Should Be Compelled to Answer Interrogatory Nos. 1-4 and 6-9

Plaintiff maintains that Interrogatory Nos. 1-3 seek irrelevant information, because “no copyrighted works are being asserted in this action.” At the beginning of this case, Plaintiff originally brought untenable copyright claims against defendants in bad faith. Defendants are the prevailing party to this claim after spending thousands of dollars in legal fees. As the prevailing party, Defendants are seeking an award of attorney’s fees. For the reasons stated above regarding Plaintiff’s misleading and improper objections to the copyright-related requests for production, Plaintiff’s objections to Interrogatory Nos. 1-3 should be similarly overruled, and Plaintiff should be compelled to provide complete answers thereto.

Interrogatory No. 4 asks to identify all persons with knowledge of relevant fact and the issues they have knowledge about (App. at 4, Ex. A). Plaintiff’s only witnesses for its case are Diane Bradshaw, the mother of the founders and Madeline Bradshaw, one of the founders. One of the owners of the company, namely Vice President Margot Bradshaw⁴ is not named.⁵ Neither is Plaintiff’s advertising agency representative, despite the fact that there is a counterclaim of false advertising. Plaintiff identifies Defendants and a few of Defendants’ non-Texas resident customers which combined are not going to prove up Plaintiff’s case. Plaintiff describes its company as follows:

⁴ Maddie and Margot Bradshaw have been described as the “Tween Tycoons” and “millionaires” and are claimed to have come up with the idea for Plaintiff’s business and the original designs. Maddie Bradshaw is the author of a book entitled “You Can Start a Business, Too!” and has made numerous television appearances of behalf of Plaintiff. Plaintiff is described as “Our company, m3 girl designs, was started by my sister, Margot, my mom and I, m3! Margot and I love brainstorming and creating new designs!” The book is described as “Being a tween entrepreneur herself, she gives information vital to a new business, from trademarks to public relations. Maddie Bradshaw's You Can Start a Business, Too! has vibrant illustrations created by Maddie herself, along with a fundamental understanding of the terms used to start a successful business.”

⁵ While Maddie and Margot Bradshaw are still teenagers they are represented by Plaintiff to be the spokes persons and owners of Plaintiff. This is a basis for Defendants’ false advertising claim so this is clearly relevant.

“After searching for magnets for my locker in 5th grade, I decided I could make my own. Soon, I decided that it would be fun to wear and trade my bottle caps. Thus, Snap Caps®, "the original interchangeable bottle cap necklace"® was created. Our company, m3 girl designs, was started by my sister, Margot, my mom and I, m3! Margot and I love brainstorming and creating new designs!

We hope you enjoy!
Thank so much,
Maddie and Margot Bradshaw

Interrogatory Nos. 6-9 are standard interrogatories used in nearly every case, and request damages information in addition to that which is required by the initial disclosures. Interrogatory No. 8 seeks a privilege log; and No. 9 seeks the fee arrangement. They plainly request relevant and discoverable information, and Plaintiff's objections are without merit.

Moreover, to the extent Plaintiff provided some information, the answers are incomplete. In response to Interrogatory Nos. 6-7, Plaintiff merely summarized what kinds of damages are generally available in any case without any specific reference to the facts and circumstances of this case. Plaintiff provided no monetary amounts, no calculations, or description of the degree to which Defendants purportedly harmed Plaintiff. Defendants are entitled to know the calculations and amount of damages at this later stage of the litigation.

Plaintiff has completely failed to provide a privilege log or in the alternative, assert that it is not withholding anything on the basis of privilege. This was requested in Interrogatory No. 8. Furthermore FRCP 26(b)(5)(A) requires that when a party withholds anything on the basis of privilege, the party must (1) expressly make the claim and (2) “describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a

manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Plaintiff should be compelled to provide a privilege log.

Plaintiff has included a claim for attorney’s fees. Plaintiff’s fee arrangement with its attorneys is relevant for the reasons outlined above in sub-part (C)(2) and was also requested in the Interrogatories, but Plaintiff has failed to provide it.

IV. CONCLUSION

For the reasons stated above, the Court should order Plaintiff to produce documents, answer interrogatories and revise its discovery responses giving general objections, and the court should sanction Plaintiff under Rule 37.

V. PRAYER FOR RELIEF

WHEREFORE, the Defendants request that the Court:

- A. order Plaintiff to produce all of the relevant documents in native digital format including emails, financial records, and photographs within 7 days;
- B. deny the objections Plaintiff’s made to the requested discovery;
- C. order Plaintiff to provide complete and proper answers to the interrogatories within 7 days;
- D. order Plaintiff to produce the documents it has withheld within 7 days;
- E. award Defendants sanctions against Plaintiff for its discovery violations, including attorney’s fees in an amount to be determined.

CERTIFICATE OF CONFERENCE

Counsel for Defendants has conferred with counsel for Plaintiff in person on June 13, 2011, but the parties have been unable to resolve the issues set forth above.

Respectfully submitted,
Charles W. Hanor
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CERTIFICATE OF SERVICE

Per Fed.R.Civ.P. 5(b), I certify that on the 7th day of July, 2011, I electronically filed per Local Rule 5.1(d) of the Northern District of Texas the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

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